

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Horace Dwayne Allen,)	
)	C/A No. 2:18-2004-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER AND OPINION
Scott County, Minnesota; Scott County)	
Minnesota Dept. of Health and Human)	
Services; and Lisa Burkhartzmeyer,)	
individually and in her official capacity)	
as the Child Support Supervisor of)	
Scott County, Minnesota,)	
)	
Defendants.)	
)	

On July 20, 2018, Plaintiff Horace Dwayne Allen, proceeding pro se, filed a complaint alleging claims of negligence, malicious prosecution, and violation of his constitutional rights under the Fifth and Fourteenth Amendments. See 42 U.S.C. § 1983. Plaintiff also filed a motion for leave to proceed in forma pauperis (IFP) on July 20, 2018. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Mary Gordon Baker for pretrial handling.

The Magistrate Judge issued a proper form order on August 14, 2018, directing Plaintiff to (1) pay the filing fee for this case or move to proceed IFP by completing and filing an application to proceed without prepayment of fees or costs; (2) complete and return one summons form for each Defendant; and (3) complete and return a Form USM-285 for each Defendant. Plaintiff was cautioned that failure to comply with the proper form order would subject his complaint to

dismissal. ECF No. 10. Plaintiff failed to respond to the proper form order.

On November 2, 2018, the Magistrate Judge issued a Report and Recommendation in which she determined that Plaintiff had failed to prosecute the case and failed to comply with the proper form order. Accordingly, the Magistrate Judge recommended that the case be dismissed without prejudice pursuant to Fed. R. Civ. P. 41. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Ace. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. It appears Plaintiff has abandoned the within action. The court concurs in the Report and Recommendation and incorporates it herein by reference. Plaintiff’s complaint **is dismissed without prejudice** pursuant to Fed. R. Civ. P. 41. Further, the court notes that Plaintiff has applied for IFP status in prior filings. His IFP applications have been denied because he is employed and receives an annual income of approximately \$41,298.00. For

this reason, Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 3) is **denied**.

IT IS SO ORDERED.

/s/ Margaret Seymour
Senior United States District Judge

Charleston, South Carolina

December 3, 2018